

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20549

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FILE: B-215190

DATE: March 20, 1985

MATTER OF: Marvin Adair

DIGEST:

An employee who receives a transfer to another agency incident to the informal settlement of a discrimination complaint may not be reimbursed for relocation expenses by the transferring agency under 5 U.S.C. § 5724(e), which stipulates that the gaining agency is to pay relocation expenses when an employee transfers between agencies (except in limited circumstances not relevant here). However, the transferring agency may pay such relocation expenses as an "appropriate remed[y]," under the authority of Title VII of the Civil Rights Act of 1964.

An employee, incident to an informal settlement of a discrimination complaint, accepted a transfer to another agency in a lower cost area in lieu of promotion. We have been asked whether he may be reimbursed for his travel and relocation expenses by the transferring agency.^{1/} Since under 5 U.S.C. § 5724(e) the gaining agency must pay relocation costs when an employee transfers between agencies except where the transfer results from a reduction in force or a transfer of function, the transferring agency may not use 5 U.S.C. § 5724(e) as authority to pay such costs. However, the agency may pay these costs in settlement of the discrimination complaint under the authority of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (1982), and implementing regulations.

BACKGROUND

Mr. Marvin Adair, formerly an employee of the Forest Service, United States Department of Agriculture, whose duty station was Plumas National Forest, Quincy, California,

^{1/} C. E. Tipton, a certifying officer with the Forest Service, requests a decision on the voucher of Mr. Marvin Adair for relocation expenses.

031526

filed an Equal Employment Opportunity complaint with the Forest Service alleging he had been denied a promotion because of his age. In settling this complaint at the informal stage, the Forest Service found a position for him in a lower cost area with the Department of Defense and agreed to pay his travel and relocation expenses to Fort Sill, Oklahoma. The Department of Defense, while agreeing to Mr. Adair's transfer, did not agree to provide relocation expenses. Mr. Adair was authorized travel and relocation expenses by the Forest Service from Quincy, California, to Lawton, Oklahoma, by a Travel Authorization issued by the Forest Service on September 7, 1983.

The certifying officer now requests our decision on whether Mr. Adair's voucher for expenses incident to this transfer may be paid. He notes that the Federal Travel Regulations, para. 2-1.6b, incorp. by ref. 41 C.F.R. § 101-7.003 (1983), generally requires that the gaining agency pay an employee's travel expenses for interagency transfers except where a reduction in force is involved. He asks whether the voucher may be paid under the authority to settle informally discrimination complaints, including the award of backpay, attorney fees, and other appropriate relief. He cites as authority for such action 29 C.F.R. § 1613.217.

RELOCATION EXPENSE PAYMENT BY AGRICULTURE

The authority to reimburse travel and relocation expenses of a transferred employee is provided in 5 U.S.C. § 5724 and regulations prescribed thereunder found at chapter 2 of the Federal Travel Regulations. The governing statute specifically provides that:

"When an employee transfers from one agency to another, the agency to which he transfers pays the expenses authorized by this section.* * *"

FTR para. 2-1.6b, as noted by the certifying officer, contains similar language. The only exception to this requirement is where a reduction in force or a transfer of function is involved. Accordingly, 5 U.S.C. § 5724 and the Federal Travel Regulations do not provide authority for the

transferring agency to pay for an employee's relocation expenses under these circumstances.

SETTLEMENT OF DISCRIMINATION COMPLAINT

The certifying officer also asks if Mr. Adair's relocation expenses may be paid under the authority of 29 C.F.R. § 1613.217 and Equal Employment Opportunity Commission, 62 Comp. Gen. 239 (1983), both of which deal with the settlement of discrimination complaints under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (1982). Thus, although the Department of Agriculture cannot pay Mr. Adair's relocation expenses under the Federal Travel Regulations, we are asked whether their authority to settle discrimination complaints is broad enough to permit them to pay him an amount equal to the relocation expenses.

Federal agencies under the provisions of 29 C.F.R. § 1613.217 and Title VII are permitted in the informal settlement of discrimination complaints to make payments of backpay and attorney fees and costs, and to grant other appropriate relief without a corresponding personnel action and without a finding of discrimination. 62 Comp. Gen. above, at 244. Such settlement authority embraces "appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section * * *." 42 U.S.C. § 2000e-16(b); see also, 29 C.F.R. § 1613.217(a). The term "appropriate remedies" is to be construed broadly. 62 Comp. Gen. at 243.

The Forest Service's agreement to reimburse Mr. Adair's relocation expenses was ancillary to the transfer worked out as the basic feature in the settlement of his discrimination complaint. Accordingly, we believe that the agreement is well within the scope of "appropriate remedies" available under Title VII, and that payment may be made on this basis.

Finally, we note that 62 Comp. Gen. 239, generally limits awards in Title VII settlements to the maximum amount of backpay that could be recovered upon a finding of discrimination. Id. at 244-245. However, we do not regard this limitation as being applicable to the payment of relocation expenses in the present case. This payment does not constitute an "award" in the sense of compensation for

B-215190

any alleged harm suffered by the employee. Instead, as noted previously, the payment is simply a means of facilitating his transfer.

Harry R. Van Cleave
for Comptroller General
of the United States